IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 270 OF 2003

Shri S. N. Mulla,
aged 62 years, Indian
National, residing
opposite Hotel Kesarval,
Cortalim, Goa. ... Petitioner.

versus

1. The Director of Education,
   Government of Goa,
   Directorate of Education,
   Panaji-Goa.

2. The Director of Accounts,
   Government of Goa,
   Directorate of Accounts,
   Panaji-Goa.

3. The Headmaster, Anjuman
   Himayatul Islam High School,
   Baina, Vasc0-da-Gama, Goa. ... Respondents.

Miss Pooja Bharne, Advocate for the Petitioner.

Mr. G. V. Tamba, Additional Government Advocate for the Respondent Nos.1 and 2.

CORAM: F. I. REBELLO &
P. V. HARDAS, JJ.

DATED: 16TH JULY, 2003.

ORAL JUDGMENT(PER F. I. REBELLO, J.)

Rule.

Respondent Nos.1 and 2 served. Waive notice.

In view of the Order to be passed, no notice to be passed on Respondent No.3.

2. The Petitioner had approached this Court by way of seeking a writ of mandamus to pay to the Petitioner all retirement dues including pension, gratuity etc. along with penal interest. On behalf of Respondent No.2, in paragraph 2 of the Affidavit-in-reply filed, it is set out that in pursuance to the directions of this Court on 23rd June, 2003, the case of the Petitioner was finalised vide PPO No.T/1947 and forwarded to the Sub-Treasury Office, Vasco for making payment vide Memorandum No.DA/PAI/PENS(cc)/246 dated 26th June, 2003. In the light of that, no directions are required in so far as payment of pensionary benefits and other dues are concerned.

3. The only issue is whether the Petitioner would be entitled to any interest for the delayed period for non payment of the dues. The Petitioner retired from services of the Respondent No.3 on 31st May, 2001. The Petitioner earlier had joined Adarsh V. V. High School, Margao, Goa, w.e.f. 7th July, 1971 to 4th June, 1972 and thereafter the Anjuman Himayatul Islam High School, Baina, Vasco-da-Gama, Goa from 5th June, 1972 till retirement i.e. 31st May, 2001. The

Petitioner passed S.S.C.E. in March, 1963 from the Maharashtra Board. The Petitioner obtained C.P.Ed. qualifications in 1969 in the examination conducted by the Government of Maharashtra, both of which are recognised as educational qualifications for employment to a teaching course in the State of Goa. The Petitioner passed his Hindi Pandit Examination in 1971 conducted by the Maharashtra Rashtrabhasha Sabha, Pune. It is the case of the Petitioner that in October/November, 2001, he was informed that the retirement dues have not been settled for want of Migration Certificate for taking into consideration the services rendered in Adarsh V. V. High School, Margao from 7th July, 1971 to 4th June, 1972. It is the case of the Petitioner that he was not aware of any such requirement and that was also not made known to him. On 20th November, 2001, the Petitioner approached Respondent No.1 for issue of the Migration Certificate. The Petitioner addressed reminder on 4th December, 2001, forwarded by a second reminder on 10th December, 2001. The Migration Certificate came to be issued on 11th January, 2002.

On 23rd January, 2002, it is the case of the Petitioner that the Petitioner's pension file along with the Migration Certificate was resubmitted and forwarded to the Directorate of Accounts on 31st

January, 2002.

4. The file was retained for three months in the Directorate of Accounts and was returned seeking proof whether Hindi Pandit and Senior Hindi Shikshak Sanad is equivalent to B.A. B.Ed. The Petitioner's case is that the Petitioner was paid salary during his services on the basis of the aforesaid equivalence. It is the further case that practically each year Audits are conducted by the officials of Directorate of Accounts and the Directorate of Education and at no stage such a query was raised and it was arbitrary to raise a query at the point of retirement. The Petitioner was made to search for proof by way of Circulars, Memoranda etc. for which he did. It is the case of the Petitioner that Respondent No.3 ultimately wrote on 27th March, 2002, to Respondent No.1 to furnish the necessary circulars/clarifications. Instead of so furnishing, Respondent No.1 called upon Respondent No.3 to furnish the same. It is the case of the Petitioner that ultimately he was able to get the Circular somewhere on 11th June, 2002, from a school in Sanvordem. The averment in the Petition shows that Directorate of Education addressed communication dated 28th March, 2002, to the Directorate of Accounts clarifying that the teacher having qualification of Rashtra Bhasha Pandit and Senior Hindi Shikshak Sanad is entitled to

draw saLary in the trained graduate scale. Even after the issuance of the communication dated 28th March, 2002, the Petitioner's pensionary benefits were not paid. The Petitioner was in need of money and went on exchanging correspondence including letters for the purpose of survival. It is the further case of the Petitioner that in the representation made on 6th June, 2002, he had pointed out that one K. B. Ranasingh, Hindi Teacher of Mata Secondary School, Vasco, who was in identical circumstances received all his benefits upon retiremennt with promptitude and in the case of the aforesaid person no clarifications or details were sought. In the light of that, the Petitioner sought for the reliefs by way of penal interest.

5. Mr. G. G. Karandikar, Deputy Director of Education has filed an Affidavit. A technical objection is raised that Respondent Nos.1 and 2 are not recognised as juristic persons nor can the State be treated as represented when the Petition is in the name of Officers/posts or the Officers holding such post. It is then pointed out that a school management being the appointing authority has to undertake the work of preparation and processing of pension papers of employees. It is then set out that the records reveal that Petitioner himself informed the school management not to process his pension papers as he had applied to

Shree Shantadurga High School, Bicholim for counting from 8th June, 1970 to 7th July, 1971. Reliance is placed on letter dated 2nd August, 2001. We may deal with this contention now itself. The said letter is addressed by the Petitioner to Respondent No.3. It is set out that with reference to his application dated 13th October, 2000, asking for counting of services rendered in Shri Shantadurga High School, Bicholim, for pension purposes, to consider the past services rendered and to settle his pensionary benefits at the earliest and to forward his pension papers with documents to Directorate of Education. We do not find anything on the part of the Petitioner not to forward his papers for pensionary benefits. On the contrary, the plea is to settle his pensionary benefits at the earliest. It is then averred that Deputy Director of Accounts returned the papers by letter dated 14th September, 2001, with certain observations. It is then set out that the pensionary benefits were resubmitted by letter dated 23rd January, 2002. The papers again were returned back by letter of 13th March, 2002 with further observations. The major objection is in the matter of the Petitioner's educational qualifications as can be seen earlier. The Migration Certificate had already been submitted. The Respondent No.3 again resubmitted the papers on 3rd September, 2002. The said papers were again returned by Respondent No.2 with

observations by letter dated 27th December, 2002 and written to Respondent No.3 by letter dated 16th January, 2003.

On behalf of Respondent No.3, the Directorate of Accounts has filed an Affidavit. It is set out that the papers came to be received first i.e. after the date of retirement. It is again reiterated of what is set out in the earlier Affidavit of Respondent No.1. In sum and substance in the aforesaid reason, no interest should be payable.

6. In the instant case, at least we do not find that the Petitioner is at fault. The Petitioner is a teacher. On retirement in normal course the retirement benefits should have been paid without undue delay and the Petitioner ought not to have been made to run from pillar to post for his rightful dues. We do not find anything on record to show that the Petitioner was at any point of time called on by Respondent No.3 not to process his papers. What would be material is that the date of Migration Certificate was granted on 11th January, 2002, and if the period of six months is considered after his date of retirement, the Petitioner's pension papers were resubmitted along with Migration Certificate on 23rd January, 2002. The Migration Certificate was issued to the Petitioner by

the Respondent No.1 on 11th January, 2002. After 11th January, 2002, in our opinion, there is absolutely no reason as to why the Petitioner should be penalised for not receiving his pension. At least, he is not at fault. The Petitioner was receiving salary as a trained teacher. In our opinion, therefore, at least from 23rd January, 2002, when the papers were resubmitted till the file is cleared and forwarded to the Sub-Treasury Office, Vasco, the Petitioner would be entitled to interest on the amount which was not paid.

7. On behalf of the Petitioner, our attention was invited to a Judgment of the Apex Court in **State of Kerala and others** v. **M. Padmanabhan Nair** (1985) 1 SCC 429 where the Apex Court has granted interest in such case. Similar is a Judgment of a Division Bench of this Court in the case of **Eurico Santana Da Silva, Retired Judge, High Court, Goa** v. **State of Maharashtra and others** 1997 LAB.I.C.313 and in another Division Bench matter in the case of **Shri John B. Braganza** v. **The Hon'ble Chief Justice and others** dated July 18, 2001.

8. The Petitioner is entitled to:-

Gratuity. The Rules themselves provide that if the gratuity is not paid in time, it is within the

jurisdiction of the authority named to direct payment of interest thereon at the rate which G.P.F. is liable to be paid at 8%. The Petitioner was also entitled to G.P.F. Rules also provide that if it is not paid in time, interest is payable at 8%. On gratuity and G.P.F. dues Petitioner will be entitled for interest on these amounts from the date of retirement i.e. from 1st June, 2001 till payment.

In so far as pensionary benefits are concerned, interest at the rate of 8% to be paid to the Petitioner for all the defaulted amounts but commencing only from 23rd January, 2002 till 26th June, 2003.

9. Rule made absolute in the aforesid terms. The interest should be paid within twelve weeks from today. Petition stands disposed of accordingly.

F. I. REBELLO, J.

P. V. HARDAS, J.

RD.